



MOA16-4241

INCORPORATED COUNTY OF LOS ALAMOS
SERVICES AGREEMENT

MEMORANDUM OF AGREEMENT
BETWEEN THE LOS ALAMOS SCHOOL BOARD AND THE INCORPORATED
COUNTY OF LOS ALAMOS FOR USE OF THE LARRY R. WALKUP AQUATIC
CENTER

THIS **MEMORANDUM OF AGREEMENT** ("MOA" or "Agreement"), is made and entered into by and between the **Board of Education of the Los Alamos Public Schools** ("LAPS") and the **Incorporated County of Los Alamos** ("County") to be effective for all purposes as of July 1, 2015. LAPS and the County are sometimes referred to in this MOA individually as a "Party" and collectively as the "Parties."

WHEREAS, the County is the owner of public swimming facility, the Larry R. Walkup Aquatic Center, ("Aquatic Center"); and

WHEREAS, LAPS wants use of the County Aquatic Center and the County herein agrees to provide LAPS use of the pool and therapy pool at the Aquatic Center for such purposes and under the terms and conditions contained herein.

NOW, THEREFORE, for good and valuable mutual consideration, the Parties do mutually hereby covenant and agree as follows:

A. GENERAL CONDITIONS:

1. The parties shall designate an individual to coordinate and schedule all LAPS activities with the County at the Aquatic Center. The initial contacts are initially designated in Section L. below.
2. LAPS agrees that its use of the Aquatic Center will comply with this Agreement and with the terms and conditions of the County's "Use and



Rental of County Lands/Facilities, effective September 1, 2006, and attached hereto as **Appendix A**.

3. The Parties shall meet within thirty-days of the effective date of this Agreement to develop a "Master Schedule" for LAPS athletic and activity programs as listed in **Appendix B**. Unless changed by mutual agreement of the parties on July 1st of each term of this Agreement, LAPS shall provide to the County's Parks, Recreation and Open Space Division Manager (responsible agent for the Aquatic Center) a proposed calendar that schedules the activities described in **Appendix B**.
4. For events and facility use not anticipated or covered by the Master Schedule, and depending on public need, maintenance schedules, safety factors, and the discretion of the Parks, Recreation and Open Space Division Manager, or designee ("Designee"), the Parties will execute a short-term facility use agreement that shall incorporate by reference the terms and conditions of this Agreement. LAPS will submit to the County's designated contact a request for short-term use no later than ten (10) business days prior to the proposed unscheduled event. The County will take all reasonable efforts to schedule the proposed unscheduled event but cannot guarantee Aquatic Center availability after development of the Master Schedule.
5. LAPS agrees to comply with all County rules, regulations, and conditions of use for the Aquatic Center as they exist or may be updated from time to time. Failure to comply with the Agreement and facility rules and regulations may subject LAPS cancellation of the event, or cancellation of the Agreement in its entirety. The County has sole discretion to determine LAPS's compliance with any aspect the Agreement or use of the facility.
6. On a daily basis, LAPS shall clear the Premises (locker rooms, decks, bleacher areas, etc.) of all trash, equipment, and debris before vacating the Aquatic Center.

B. EFFECTIVE DATE AND TERM:

This Agreement shall be effective when signed by both parties in duplicate originals and shall remain in effect until **July 1, 2020** unless terminated earlier pursuant to Paragraph I below. This Agreement may be renewed for up to three-one year terms upon mutual written agreement of the parties. Renewal shall be by amendment of this Agreement.

C. FEES:

1. As approved by the County Council on March 27, 2011, all fees identified in **Appendix C** will be waived for LAPS in accordance with the "Guiding Principles For Los Alamos County Financial Support For Public Schools in Los Alamos."
2. If a LAPS event requires additional County support staff, County janitorial staff, special equipment, or any other special service requiring expenditure of County money or services, the parties will mutually agree at the time of reservation the services and/or equipment needed and the respective costs for each particular event. LAPS will be responsible for any fees for additional custodial services where the Aquatic Center is left unclean after scheduled and unscheduled events listed in **Appendix A** or as may be scheduled. All custodial service fees will be based on the adopted Aquatic Center fee schedule for that period (**Appendix C**).
3. The County will allow LAPS to collect admission fees for School swim meets. The point of collection will be mutually agreed upon at each scheduled or unscheduled event and will not hinder or impact the general public's use of the Aquatic Center or safety protocols of the Aquatic Center.
4. LAPS will be authorized to provide food concessions in accord with New Mexico Environment Department ("NMED") food safety regulations for LAPS

swimming meets. LAPS will not be allowed to serve alcoholic beverages at the Aquatic Center. The location of the concession stand will be in the area(s) approved by the Aquatic Center manager on duty, or designee, at least 72 hours in advance of the event where concessions will be served. LAPS will be responsible for all set up and removal of any concessions. Failure to clean, remove, or dispose of any concession related items, trash, or debris may be cause for the County's assessment of additional custodial and cleaning service fees. Outside vendors on County property must contact the Parks, Recreation and Open Space Division Offices in the Aquatic Center at least seventy-two (72) hours in advance of the planned event or competition where concessions are to be served to obtain a permit and pay applicable vendor fees.

5. For damage caused to the Aquatic Center by LAPS, its invitees, guests, or participants the County reserves the right to charge LAPS the cost for the repair of any damages incurred as a result of LAPS use. The County will notify LAPS's designated contact and LAPS's Chief Operating Officer of such charge(s) and will invoice LAPS according to terms of this Agreement.

D. SCHEDULING

1. All use and scheduling will comply with the County's "Use and Rental of County Lands/Facilities" Section III. B.
2. During the development of the Master Schedule, established County Recreation programs shall take priority over new and expanded LAPS programs as identified in **Appendix A**.
3. In the event of a conflicting schedule between the Parties, the Aquatic Center event will take precedence.
4. The Aquatic Center will give LAPS preference over a third-party when scheduling facilities, except to the extent there exists a prior written third-party agreement, including perfected reservations and permits.

5. Any conflicts that may arise or problems which may be identified concerning schedules will be addressed by the Parties designees as described above.
6. Changes to the Master Schedule that cannot be addressed by the terms in paragraph Section I. A (1) shall be made on a case-by-case basis only at a scheduled planning session and only with the approval of the Parties' designees as described in Paragraph A (3). The County may not be able guarantee the specific date, time, or location of a LAPS unscheduled or conflicting event.
7. To the extent possible, five (5) business days' notice of cancellation will be given to the LAPS designee unless the cancellation is due to unsafe conditions; uncontrollable forces such as mechanical failure, fire, theft, storm, or war; or for any other reason that could not have been reasonably avoided by exercise of due diligence.

E. PRACTICE SESSIONS:

1. LAPS participants may use designated swimming lanes for training purposes as assigned by the County's Aquatic Center manager, or designee. Reservations for any Aquatic Center lane use will be made by LAPS at least seven days in advance of the planned use and approval of request will depend on public needs, maintenance schedule, safety factors, and the Aquatic Center manager, or designee.
2. LAPS coaches are to make every effort to be cooperative with fellow public patrons, programs, and Aquatic Center staff to facilitate cooperative, efficient, and effective use of the Aquatic Center facilities. LAPS coaches are to educate their participants and enforce posted pool rules. LAPS coaches should be familiar with and are expected to comply the terms and conditions of this Agreement.
3. LAPS may use County owned equipment such as pace-clocks, kickboards, pull-buoys, fins, and hand-paddles as long as all equipment is used in a safe and appropriate fashion and is returned to storage areas after each practice

session. The use of the Aquatic Center timing system used for swimming events and competitions, including swim meets, must be separately negotiated with the private swim team who owns the equipment.

F. MAINTENANCE:

1. The County shall maintain and be responsible for general maintenance and upkeep of the Aquatic Center. The County will provide to LAPS the facilities in general and reasonable working condition.
2. The Parties agree to take all reasonable precautions in connection with the use of the Aquatic Center in order to protect the health and safety of the public or any person or persons using or occupying the Facility. Each party is responsible for eliminating or minimizing danger from all hazards to life and property. LAPS agrees to comply with all local, state and federal health, safety, and fire protection rules, laws, regulations and requirements.
3. At the time the Master Schedule is being developed, the County will coordinate and schedule any Aquatic Center remodeling, alterations, or major repairs to times that the Aquatic Center is not being used or to locations and times where repairs will not disrupt LAPS athletic/activity periods.

G. SITE SELECTION:

The County agrees that the Aquatic Center, for uses pursuant to this Agreement, shall meet all applicable county, state and federal requirements, including, without limitation, building code requirements, field/sport requirements, State Fire Marshal requirements, and the American with Disabilities Act.

H. INSURANCE:

LAPS shall maintain and provide to the County liability insurance and coverage verifications for those risks and in those amounts required by NMSA 1978, § 41-

1-19 and as related to the purposes of the Agreement. Failure to maintain adequate liability insurance is a condition precedent to the terms and conditions of this Agreement and failure to maintain such insurance is cause for immediate cancellation of the Agreement.

I. TERMINATION:

This Agreement may be terminated by either party, for any cause, upon written notice delivered to the other party at least ninety (90) days prior to the intended date of termination.

J. FUNDING AND APPROPRIATIONS:

1. It is understood that the terms of this Agreement are contingent upon receipt of funds under the Public School Finance Act, with authorization being made available by the State Superintendent of Public Instruction for performance of this Agreement. If sufficient appropriations and authorizations are not available, this Agreement shall immediately terminate upon written notice given by Schools pursuant to paragraph I above. The decision of LAPS as to whether appropriations are available shall be accepted by the County and shall be final.
2. The terms of this Agreement are also contingent upon receipt of budget funds by County to continue operation and maintenance of the Aquatic Center. If appropriations are not available or sufficient, this Agreement shall immediately terminate upon written notice given by County. The decision of County as to whether appropriations are available shall be accepted by LAPS and shall be final.

K. AMENDMENT:

This Agreement shall not be altered, changed or amended except by an instrument in writing and executed by the parties hereto. Amendments to

specific portions of the Agreement will only those provisions with the remaining terms and conditions continuing in effect. Extension of the Agreement pursuant to paragraph/section B. above, will be by mutual amendment.

L. NOTICES:

Any notice required by this Agreement shall be given in writing to the Parties designated representatives below. Notice shall be effective when delivered personally to any party, or three (3) business days after deposited, postage fully prepaid, registered or certified, in an official receptacle of the U.S. Postal Services.

County: Los Alamos County
Attention: Parks, Recreation and Open Space Division Manager
2760 Canyon Road
Los Alamos, New Mexico 87544

Schools: Los Alamos Public Schools
Attention: Chief Operating Officer
2075 Trinity Drive
Los Alamos, New Mexico 87544

M. INVALIDITY OF PRIOR AGREEMENTS:

This Agreement supersedes all prior contracts or agreements, either verbal or written, that may exist between the parties with reference to the authorized uses described herein and expresses the entire agreement between the parties with reference to said uses. The Agreement cannot be modified or changed by any verbal promise by whosoever made, nor shall any written modification of it be binding until same shall have been approved by the County and LAPS.

This provision is not intended to supersede the County's or LAPS's administrative guidelines for the use of indoor and outdoor facilities. LAPS and the County shall assure compliance with all applicable state and federal statutes and regulations.

N. GOVERNING LAW:

This Agreement shall be governed by, and construed in accordance with the laws of New Mexico and in accordance with the Los Alamos County Code of Ordinances, which may be from time to time updated.

O. FORCE MAJEURE:

Neither the County nor LAPS shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

P. NON-ASSIGNMENT:

The Parties may not assign, sublet, or otherwise transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other.

Q. LIABILITY:

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation of requirements applicable to the performance of the agreement. Each party shall be liable for its actions in accordance with this Agreement.

IN WITNESS WHEREOF, in duplicate originals, the undersigned and duly authorized representative of LAPS and County have caused this Agreement to be executed by their respective officers, said Agreement to become effective as of the date approved by each.

ATTEST

**INCORPORATED COUNTY OF LOS
ALAMOS**

Sharon Stover 6/24/2015

SHARON STOVER
COUNTY CLERK



for Harry Burgess 6/23/15

HARRY BURGESS
COUNTY ADMINISTRATOR

APPROVED TO FORM

Rebecca W. Ehler 6-23-15

REBECCA W. EHLER
COUNTY ATTORNEY

LOS ALAMOS PUBLIC SCHOOLS

Kurt Stienhaus 6-16-15

Kurt Stienhaus
SUPERINTENDENT, LOS ALAMOS
Public Schools

Appendix A. Los Alamos County "Use and Rental of County Lands/Facilities, effective September 1, 2006

[DOCUMENT TO BE INSERTED HERE]

Appendix B. LAPS Master Calendar Programs

AQUATIC USE AGREEMENT EXISTING PROGRAMS

Program/Activity	Usage	
Los Alamos Public Schools		
High School Swimming & Diving		
Swim Team Practice	62 days @ 2 hours @ 6 lanes	
Dive Team Practice	62 days @ 1.5 hours @ 4 lanes (Diving Well)	
* Swimming Meets	3 days @ 8 hours @ 24 lanes	<i>*State Meets not included</i>
Diving Meets	2 days @ 3 hours @ 6 lanes	
High School X-Country/Track	32 hours @ 4 lanes	
9th Grade PE	178 hours @ 11 lanes	
NJROTC	24 hours @ 4 lanes	
Special Needs	146 students @ \$2.50	
Field Trips/Hawk Time	150 students @ \$2.50	

AQUATIC USE AGREEMENT PROGRAM FEES

Appendix C. Los Alamos County Aquatic Center Fee Schedule (Effective date: _____)

Program/Activity	Fee

Los Alamos Public Schools

* High School Swimming & Diving

\$23,672.00

* Swimming Meets

*State Meets @ \$132.50 per hour. Regular season
and District meets are included in the above fee.*

High School X-Country/Track

\$2,438.00

9th Grade PE

\$5,208

NJROTC

\$150

Special Needs

\$365.00

Field Trips/Hawk Time

\$375.00

\$32,208.00

Additional Rental Fees for Special Uses Above and Beyond General Use Agreement

- 1) *State Meets not included, additional
charges apply for events over 100
participants/swimmers entered per day

\$132.50 per hour

- 2) Classroom Rental

\$25 per hour

- 3) Custodial Service Fees - Facility left
unclean

\$35 per hour / Per Custodian

- 4) Monitor Fees - Early or Late Use,
before/after hours

\$35 per hour / per staff